IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 455 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH CHHOTALAL VERMA

Versus

STATE OF GUJARAT

Appearance:

MR RJ GOSWAMI for Petitioner

MR KC SHAH, APP, for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/09/2000

ORAL JUDGEMENT

This revision is directed against the order dated 29.4.1998 of Special Judge, rejecting the application of the revisionist claiming discharge from prosecution in a case lodged u/s 3 read with Section 7 of the Essential

Commodities Act against him and co accused no.1.

2 Shri R.J. Goswami, learned counsel for the revisionist and Shri K.C. Shah, leanred APP, have been heard.

3. An application was moved by the revisionist before the Special Judge seeking discharge on the ground that there is absolutely no material to proceed against him for the alleged offences u/s 3 read with Section 7 of the Essential Commodities Act. The said application was rejected by the Court below on the ground that there is a statement of the co accused no.1 against the revisionist and that was sufficient material for proceeding against the revisionist. In support of this view, reliance has been placed upon a pronouncement of this Court in A.D. SONI V. DIRECTOR OF REVENUE INTELLIGENCE 1997 (3) GLR 2019. This view and the reasoning of the learned lower Court has been assailed by the learned counsel for the revisionist that the statement of the co accused during the investigation is hit by Section 25 of the Evidence Act and as such there is no evidence or material to proceed against the revisionist.

4. Record of the lower Court has been examined and it is found that except the statement of the co-accused no.1, there is no other material against the revisionist. That statement was made by accused no.1 during investigation to the police. For all purposes it can be said that to be mere statement u/s 161 of Cr.P.C. Statement u/s 161 of Cr.P.C. cannot be used as substantive evidence during the trial against co accused. It cannot be said to be a confession of a co accused which can be used against another co-accused. For that also formalities are required to be observed, namely, the investigating officer should have recorded the confession by taking requisite precautions that the same is recorded as confession of the co-accused. The statements of the witnesses recorded during the course of the investigation did not in any way implicate the revisionist in the proceedings pending before the Court below. It was also found that the revisionist was holding a valid licence for dealing in solvent. The confession in the Court below was that in view of the valid licence no offence was committed by the revisionist. However, in response to this stand of the revisionist in the Court below, it was argued from the side of the prosecution that the revisionist had violated condition no.11 of the licence issued to him by acting in a manner contrary to the terms and conditions of the licence and also in a manner contrary to the circular and directions issued by the

State in this regard through an order dated 16.12.1997. This plea of the prosecution has no legs to stand because violation of the circular letter datd 16.12.1997 was pressed against the revisionist whereas the offence was allegedly committed by him on 5.10.1997. This circular letter cannot be given retrospective effect. As such, on this ground it can hardly be said that there was any material against the revisionist for framing charges against him.

5. So far as the view of this Court in A.D.Soni v. Director of Revenue Intelligence (supra) is concerned, I feel that it was not correctly appreciated by the Court below. It was in a different context, namely, whether powers u/s 319 of the Cr.P.C. can be exercised by the Sessions Court even without recording the evidence and in that context it was held that the Sessions Court can exercise the power u/s 319 before framing of charge and no evidence is required to be recorded by the Sessions Court. While taking this view, this Court has referred to the decision of the Apex Court in the case of KISHUN SINGH V. STATE OF BIHAR (1993) 2 SCC 16. But, it may be mentioned that the view of the Apex Court in Kishun Singh's case was recently overruled by the Apex Court in Ranjeet Singh v. State of Punjab 1998(4) CRIME 5. As such, the law as was enunciated by the Apex Court in Ranjeet Singh's case (supra) makes it obligatory for the Sessions Judge to record the statement and only on the basis of the statement of the prosecution witnesses that power can be exercised under Section 319 of the Cr.P.C. If this is the latest view of the Apex Court, then, it seems difficult for me to subscribe to the view of this Court in A.D. Soni's case (supra) where it has been laid down that the term "evidence" employed in Section 319 of the Code of Criminal Procedure does not necessarily mean only such evidence which constitutes legal and admissible evidence at the trial and it includes the evidence collected during the investigation, the documents relied on for the purpose of taking cognizance and then at the stage of trial to prove the guilt of the accused. There are catena of decisions to the contrary where it has been laid down that the word "evidence" under Section 319 of Cr.P.C. does not mean only examination-in-chief of one or two witnesses examined by the prosecution. On the other hand evidence means the statement in examination-in-chief for which an opportunity of cross-examination has been given to the accused and it is only such complete statement of a witnesss which constitutes evidence for the purpose of Section 319 of Cr.P.C. If this is the law then the statement of the co-accused during the investigation is neither prima

facie evidence for the purpose of evidence whatsoever nor it can be said to be material on which co-accused can be proceeded with. Of course, if there would have been some other material on which revisionist could be proceeded with, the learned Special Judge could have been said to have been justified in rejecting the application but simply on the strength of the statement of the co-accused recorded by the investigating agency under Section 161 of the Cr.P.C. it cannot be said to be a material sufficient for proceeding against the revisionist. The order refusing discharge therefore suffers from manifest illegality. The revision in these circumstances has to be allowed and the application for discharge Exh.4 moved by the revisionist has to be allowed.

6 The revision is hereby allowed. The impugned order dated 29.4.1998 is set aside. The application moved by the revisionist moved in the Court below is allowed and he shall be deemed to have been discharged.

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